

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ROBERT GROSS,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 1:10cv328-DBH
)	
JOHN GRIFFIN, ET AL.,)	
)	
DEFENDANTS)	

**ORDER AFFIRMING RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE**

On May 9, 2011, the United States Magistrate Judge filed with the court, with copies to counsel, her Recommended Decision on Motion to Dismiss of Estate of Robert Fiorentino. On May 26, 2011, the defendant Estate filed a limited objection and the plaintiff filed an objection to the Recommended Decision.

I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision, and determine that no further proceeding is necessary.

I add that the Supreme Court in Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 490 (1988), addresses when actual notice is

required (known or reasonably ascertainable claimants) and when publication is sufficient (claimants who are not reasonable ascertainable), for the statute of limitations to run. This case fits the latter standard. Moreover, when the statute of limitations acts automatically, without court intervention, as it does here when the longer period from date of death is measured, notice is not required. That too applies here. See Estate of Kruzynski, 744 A.2d 1054, 1057 (Me. 2000).

Finally, I observe that 28 C.F.R. § 50.15(c) appears to apply only to employees of the Department of Justice, not the case here. However, that does not alter the conclusion that the liability insurance exemption for the Maine Probate Code's statute of limitations, 18-A M.R.S.A. § 3-803(c)(2), does not apply.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. Because the Maine Probate Code has "forever barred" the plaintiff's action against the Estate of Robert Fiorentino by operation of a limitation on the survivability of claims not timely presented, the Estate's motion to dismiss is granted. The claims against the Estate and the Personal Representative are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

DATED THIS 6TH DAY OF JULY, 2011

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE